

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LORCEN BURROUGHS,

Plaintiff,

-v-

9:15-CV-0818
(DNH/ATB)

DERRICK PETRONE, JOHN DOE #1,
KENNETH BALDWIN, ABEL MELENDEZ,
PAUL R. MORRIS, SCOTT E. MELLET,
JAMES G. MCKEOWN, PETER A. STETZ,
and BRIAN FISCHER,

Defendants.

APPEARANCES:

OF COUNSEL:

LORCEN BURROUGHS
Plaintiff, *Pro Se*
08-B-3022
Attica Correctional Facility
Box 149
Attica, NY 14011

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MARK G. MITCHELL, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Lorcen Burroughs brought this civil rights action pursuant to 42 U.S.C. § 1983. On July 15, 2016, the Honorable Andrew T. Baxter, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for partial dismissal concerning

defendants Petrone, Baldwin, Morris, Stetz and Fischer be granted in part and denied in part. See ECF No. 67. Neither party has filed timely objections.

Based upon a de novo review of the Report-Recommendation, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

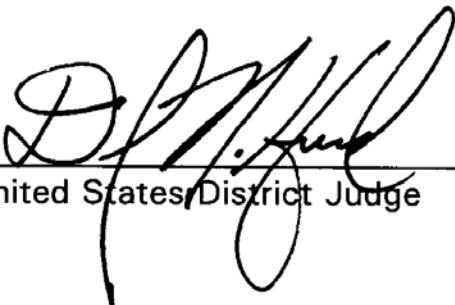
Therefore, it is ORDERED that:

1. Defendants' motion to dismiss (ECF No. 27) is **DENIED** as to defendants Petrone, Baldwin, Morris and Stetz;

2. Defendants' motion to dismiss (ECF No. 27) is **GRANTED** as to defendant Fischer, and the complaint **DISMISSED WITHOUT PREJUDICE** to plaintiff submitting a proposed amended complaint on or before **October 26, 2016**, amending or supplementing only allegations as to the personal involvement of defendant Fischer with respect to the alleged retaliatory misbehavior report issued by defendant Petrone on July 7, 2012. Any proposed amended complaint must completely supercede the original complaint and should include only the claims that remain in this action after this Court's October 15, 2015 order, in addition to any amended allegations relating to the personal involvement of defendant Fischer. Plaintiff should not repeat any of the dismissed claims in the amended complaint; and

3. The Clerk serve a copy of this Decision and Order upon plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.



United States District Judge

Dated: September 26, 2016
Utica, New York